

**FINAL REPORT  
OF THE  
NATURAL RESOURCES STUDY COMMITTEE**



**Indiana Legislative Services Agency  
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Indianapolis, Indiana 46204-2789**

**November 2003**

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# **Natural Resources Study Committee**

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### **Legislative Services Agency Staff**

**Bernadette Bartlett, Fiscal Analyst  
Steven Wenning, Attorney**

**November 2003**

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

## FINAL REPORT

### **Natural Resources Study Committee**

#### **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted legislation directing the Natural Resources Study Committee to do the following:

1. Conduct a continuing study of the laws relating to the Department of Natural Resources (DNR) to the end that legislation may be proposed to better serve the citizens of Indiana. The Committee is to consult with representatives of the DNR and citizens of Indiana for the purpose of proposing legislation to accomplish the following:
  - (a) repeal of outmoded or unnecessary laws;
  - (b) consolidation and restatement of existing laws;
  - (c) improved coordination of state laws with federal laws; and
  - (d) addition or amendment of laws that will further the purpose for which the DNR was created. (IC 2-5-5-3)
2. Advise and assist the DNR in programming its activities and in developing a long-range plan for land acquisition, capital improvement, and development of facilities. (IC 2-5-5-3)
3. Oversee the Water Resource Management Program under IC 14-25-7. (IC 14-25-7-16)

The Legislative Council assigned the following additional topics to the Committee:

1. Abe Lincoln bicentennial (SB 224)
2. Consolidation of Indiana historical entities (Legislative Council)

#### **II. INTRODUCTION AND REASONS FOR STUDY**

The Natural Resources Study Committee met to carry out its statutory responsibilities under IC 2-5-5-3.2 and IC 14-25-7-16 and to consider the topics assigned by the Legislative Council.

#### **III. SUMMARY OF WORK PROGRAM**

The Committee met four times during the 2003 interim. Meetings were held as follows:

1. July 16, 2003, at the State House in Indianapolis;
2. August 14 and 15, 2003, at Clifty Falls State Park, Madison;
3. October 15 and 16, 2003, at Pokagon State Park, Angola;
4. October 28, 2003, at Fort Harrison State Park, Indianapolis.

#### **IV. SUMMARY OF TESTIMONY**

The Committee heard testimony from DNR professionals, members of the General Assembly, representatives of various associations, private citizens, and other interested parties. An overview of the testimony is presented below.

**In-House Construction for the DNR.** John Davis, DNR Deputy Director, and Tom Holman

explained that IC 4-13.6-5-4 limits construction projects that the DNR can complete using DNR employees to those projects that cost less than \$50,000. IC 4-13-2-11.1 limits the Department of Correction to projects costing less than \$100,000. All other state agencies are limited to \$75,000. The DNR proposed increasing the DNR limit to \$75,000.

DNR's seasonal work cycle allows staff to complete construction projects during winter months when public visitation to DNR properties is minimal. Additionally, DNR staff might have a greater awareness of the historic importance of the building's material and might work to save historic material if possible.

**Oil and Gas Reporting.** Mike Nicholaus, Director, DNR Oil and Gas Division, explained the issue of false reporting of the capping of oil and gas wells. Drilling can open a pathway from a fresh water zone to an oil zone. To prevent contamination, wells are required to be plugged at the appropriate levels and with the appropriate materials. To ensure that wells are plugged properly, the DNR supervises well plugging on a random basis; tests cement processes used; and reviews plugging documents. DNR is also developing new rules to govern the plugging of wells that will limit the types of material that can be used to plug a well; that will require verification of the plug placement; and additional signature certification on well plugging and abandonment reports. Currently, false reporting is a Class D felony for injection wells and a Class B misdemeanor for other wells. The fine for violations of the Oil and Gas Code is \$10,000 per day. The DNR proposed establishing a Class D felony for violations relating to all wells and to establish a fine of \$20,000 per day.

**Senior Fishing License.** John Goss, DNR Director, proposed decreasing the cost of a license to fish from \$10.50 per license to \$3 per license for anglers 60 to 64 years. He also proposed establishing a new senior fishing license for those 65 and older. Revenue from the sale of fishing and hunting licenses is deposited in the Fish and Wildlife Fund that is used to pay the operating expenses of the Divisions of Law Enforcement and Fish and Wildlife. A \$3 senior fishing license would provide a \$248,827 increase in license revenue for the Fish and Wildlife Fund. For each new fishing license sold, the federal government provides \$6.60 in reimbursement. Given the projected 87,462 anglers aged 65 or over, an additional \$577,249 in fishing equipment excise tax would be returned to the state instead of going to other states. Four surrounding states have senior fishing licenses: Michigan (\$10.80); Illinois (\$10); Kentucky (\$5); and Ohio (\$10). Dick Mercier, Indiana Sportsman's Roundtable; Jack Hyden, Indiana Beagle Alliance; and Charlie O'Neal and Paula Yeager of the Indiana Wildlife Federation supported the proposal.

**DNR Drainage Code Issue.** Mike Neyer, Director of the DNR Division of Water, reported on a drainage code issue. IC 36-9-27 governs county surveyors, county drainage boards, and the process by which regulated drains are established, assessed, and maintained. IC 36-9-27-33 authorizes the county surveyor, the board, or an authorized representative of the surveyor or the board, right of entry over and upon land lying within 75 feet of any regulated drain. County surveyors have discretion to limit the reconstruction and/or maintenance activities on a regulated drain. With respect to the Elkhart River, the Noble and LaGrange County Joint Drainage Board sought to commit that they would use less than their full power for reconstruction along the drain (to less than 75 feet), but could not legally bind this promise on a future drainage board. Many environmental groups sued, concerned about the river's resources and unwilling to accept the surveyors' oral promise. DNR intervened because the Department manages a nature preserve and a wetland conservation area on the river. In an effort to remedy the situation, DNR proposed to enact in statute the following:

- that a county surveyor’s final report be written;
- that the written report include reference to what reconstruction and/or maintenance activities the surveyor could use on the drain;
- that a drainage board go through a public process if it wanted to later add activities;
- that the DNR be given notice when a regulated drain is established.

County surveyors from Huntington (Jay Poe), Allen (Al Frisinger), Marshall (Larry Fisher), and LaGrange (Rex Pranger), Counties and the Whitley County Engineer (Brandon Forester) were reluctant to open the drainage code. Representatives from the Izzac Walton League and the Indiana Wildlife Federation and a citizen supported the proposal. Ted Hemstra, Ft. Wayne Acres, Inc., agreed to access as needed, but wanted to limit the right of way. The DNR decided not to recommend legislation and to continue to work with interested parties.

**Department of Indiana Heritage.** Beth Compton, Governor’s Office Executive Assistant, reported on a study being conducted by the State Budget Agency, Department of Administration, and the Department of Personnel that considered the establishment of a Department of Indiana Heritage. SB 490-2003 required that the study include an examination and recommendation for the organizational structure for the proposed department as well as the fiscal impact that would result from establishing the department. Additional inherent costs if a new department were established included personnel costs for a commissioner, assistant commissioner, staff attorney, specialty legal services (that could be contracted), director of security, and marketing director. The fiscal impact for necessary personnel was estimated at \$300,000 a year for salary and benefits if the current marketing and security personnel were used. Otherwise, personnel costs would equal \$350,000. The new department would also require a one-time investment in equipment of \$400,000 -- \$450,000.

Reid Williamson, President of the Historic Landmarks Foundation, supported the concept of a department of heritage as did John Molitor, Indiana Historical Society and the Indiana Historic Landmarks Foundation. John Goss, Director, DNR, noted that a new agency could have many different impacts on the Department. He noted that existing commissions were concerned because of their current reliance on DNR for certain support services.

The Governor’s Office did not recommend the establishment of the new agency, but indicated that it would work with and encourage agencies involved to achieve efficiencies and coordination.

**Lincoln Bicentennial Commission.** The committee heard testimony that supported the establishment of a Lincoln Bicentennial Commission. The Committee was given the opportunity to offer a design for the Lincoln Bicentennial License plate.

**Historic Sites Admission Fees.** Laura Minzes, DNR Division of Historic Sites, provided an overview of historic sites which currently operate on donations. The average donation for 2002 was \$0.62. With an admission fee, the DNR hopes to generate an average of \$1.90 per person. A portion of the revenue would remain at the site. The Natural Resources Commission authorized the Division to ask for a \$1 donation per student for school groups. John Molitor, Historic Landmarks Foundation and Indiana Historical Society, supported the proposal.

**Field Trials for Dogs.** John Davis, Deputy Director, DNR, explained the history behind the U.S. Fish & Wildlife Service audits that led to the cancellation of the field trials and efforts DNR is making to allow field trials in the future. State fish and wildlife areas and state reservoirs have

dog training areas. However, DNR is looking for properties that are accessible year round. Ohio maintains 19 dog training properties. Indiana has 28-30 potential properties. Jack Hyden, President of the Indiana Beagles Association, raised concerns about restrictions placed on owners of sporting dogs. Barry Miller, of the Indiana Field Trials Association, also expressed his concerns about limited opportunities for owners of sporting dogs. Mike Jackson, Horseback Field Trials, also expressed concerns about available opportunities for horseback sporting events and field trials.

**Classified Forests.** Sen. Young stated that some constituents had raised the issue about the requirement that land must be surveyed by a licensed surveyor in order to be considered for the Classified Forest Program, yet the SWCD had a mapping system that could identify the forest for less cost. He suggested that SWCD maps be accepted. Rep. Bischoff encouraged Sen. Young to pursue legislation.

**INDOT Mowing of Wildlife Habitat.** Dick Mercier, Indiana Sportsmen's Roundtable, proposed limiting wildlife habitat destruction that occurs when the Indiana Department of Transportation (INDOT) mows along highways. Phil Ohmit, Hoosier Conservation Alliance, supported the proposal, noting that mowing in certain directions flushes wildlife onto the highways as opposed to into the fields. Kathy Noland, INDOT, outlined INDOT's policy relative to mowing the rights of way and INDOT's environmental progress and roadside programs designed to enhance habitat for native plants using federal funding. Mr. Mercier reported that interested parties agreed to meet with INDOT districts and subdistricts to discuss ways to increase habitat for wildlife. If no progress is made during the next year, the Sportsmen's Roundtable would return with a proposal.

**Interstate Pest Control Compact.** Dr. Robert Waltz, State Entomologist and DNR Director of the Division of Entomology and Plant Pathology, recommended that Indiana join the Interstate Pest Control Compact. Dr. Waltz explained the need for the compact, citing the case of the Emerald Ash Borer, which is an insect that can destroy North American ash trees. Currently, infestations are found in southeastern Michigan, Toledo, and Hicksville, Ohio. The Hicksville infestation is within two miles of the Indiana border. In Detroit, 3,000 square miles contain infested ash trees. When a borer is found, ash trees within a one-half mile radius must be destroyed. The DNR, U.S.D.A, and the U.S. Forest Service are conducting surveys in northern Indiana. Although the Emerald Ash Borer has not yet been found in Indiana, the DNR has been monitoring trees imported from infested areas. The Compact is an insurance fund. Currently, 34 states belong. If a pest problem occurred that was an interstate threat, money in the fund would be used to combat the pest. To join, Indiana must pay a one-time fee of \$33,342 over a six-year period. The DNR had identified an existing funding source to pay the fee.

**Funding for Clean Water Indiana.** Gene Weaver, Vice President of the Indiana Association of Soil and Water Conservation Districts, and Bob Eddelman, Marion County Water Conservation District, provided an overview of the work of the districts and requested a dedicated and permanent source of funding for the Clean Water Indiana Program. Districts are charged with assessing natural resource conditions and developing programs to solve soil, water, and related resource problems. County governments currently provide about \$4.5 M for SWCD operations. In 2001, \$2 M of the Build Indiana Fund was appropriated for SWCDs; however, budget deficit problems resulted in the withdrawal of \$1M of these funds. In 2003 over 4,400 landowners requested over \$73 M in financial assistance to install conservation measures such as nutrient and pesticide management, grassed waterways, conservation tillage, tree planting, wetland

restoration, pasture improvement, etc.. However, less than 23% of this amount was available from the U.S. Department of Agriculture (USDA). The USDA is working with Indiana to develop the Conservation Reserve Enhancement Program (CREP), which will allow Indiana to leverage \$4 to \$8 for every \$1 from the state. The program will provide funding for vegetative buffers along streams and other waters, which will filter nutrients and sediment from water runoff. Missouri has spent over \$30 M in conservation efforts; Illinois has spent \$21 M; Iowa, \$13 M; Ohio, \$11 M; and Michigan, \$8 M.

Charley O'Neal, Indiana Wildlife Federation, supported funding for the program as did Jason Hill, Regional Biologist for Ducks Unlimited. Mr. Hill announced that Ducks Unlimited was interested in becoming a financial partner in the state CREP. Danny Blandford, Conservation Director of Indiana B.A.S.S, submitted a letter to the committee encouraging the establishment of dedicated and permanent funding for Clean Water Indiana. Sandra Flumm, Allen County Commissioners Office, indicated that locals need a position on the board that directs the SWCDs. Barbara Power, a citizen, suggested leasing state land and use the revenue generated by the lease to fund Clean Water Indiana. Representatives from the Indiana Sportsmen's Roundtable, the Indiana Wildlife Federation, Hoosier Environmental Council, Pheasants Forever, the Nature Conservancy, the Miami Indians, and the Indiana Lakes Management Society supported the program and urged permanent funding for the program.

The committee discussed the fact that there was a sales tax on tap water but not on bottled water. SWCDs could explore moving bottled water from a nontaxable item to a taxable one. Rep. Bischoff challenged the SWCDs to move forward with the issue and to have language drafted for the next legislative session.

**Native American Indian Commission.** Beth Compton, Governor's Office Executive Assistant, reviewed actions taken on SB337-2003 to create the Native American Indian Affairs Commission that was vetoed by Governor O'Bannon. She indicated that the bill did not include the Miami Indians of Indiana. The Governor created a commission by executive order using language similar to language that was in the bill. The Governor's Office started seeking appointments to the Commission. Governor Kernan issued a new executive order continuing the O'Bannon executive order. Brain Buchanan, Chief of the Miami Indians, John Dunnigan, Penny Fouts, Brenda Hartleroad, and Sara Siders, of the Miami Indians, supported the establishment of the new commission in statute. Debra Haza and Sally Tuttle, Native Americans, supported the establishment of the commission through legislation. Brenda Hartleroad, Miami tribe member, indicated an interest in being a member of the commission.

**Construction of Piers on Easements.** Coleen Synder, Pam Kruze, and Fritzi Nodine, Oakwood Place Association, described the difficulties that the Association faced relative to the construction of piers on easements. The development, located on Hamilton Lake between Auburn and Angola, was plotted in 1913. All properties had waterfront easement rights. In 2001, the DNR allowed piers to be placed on three easements. The Association was not sure about what rights the 150 others had on the piers. The Association voted not to allow piers on the easements and would like to have a law that specifies and clarifies rules that apply to the construction of piers on easements. Funneling problems exist when multiple users have access and use the easements.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following legislative recommendations by roll-call vote.



**PD 3459** establishes the Abraham Lincoln Bicentennial Commission. The Committee voted five ayes to no nays to recommend the proposal to the General Assembly.

**PD 3386** which allows the Natural Resources Commission to set, collect, and fees for historic sites. The Committee voted six ayes to no nays to recommend the proposal to the General Assembly.

**PD 3431** increases from \$50,000 to \$75,000 the cost of projects that the DNR may perform without awarding a public works contract. The Committee voted six ayes to no nays to recommend the proposal to the General Assembly.

**PD3471** provides for the adoption of the Interstate Pest Control Compact. The Committee voted six ayes to no nays to recommend the proposal to the General Assembly.

**PD 3460** increases penalties for violation of certain oil and gas well laws. The Committee voted six ayes to no nays to recommend the proposal to the General Assembly.

**PD 3389** discontinues the fishing license exemption for residents who are at least 65 years of age. The proposal also establishes a senior fishing license for residents who are at least 60 years of age. The draft also discontinues the issuance of new lifetime hunting, fishing, and trapping licenses. The Committee voted five ayes to one nay to recommend the proposal to the General Assembly.

**PD 3458** establishes the Native American Affairs Commission. The Committee voted five ayes to one nay to recommend the proposal to the General Assembly.

**PDoc 20041671.001** prohibits, except when granted written permission, constructing or maintaining a pier, dock, or other structure that blocks or restricts an easement holder's access to or use of a public lake. The proposal allows an easement holder to use certain structures that extend from the easement to the shoreline or lake. The Committee voted five ayes to no nays to recommend the proposal to the General Assembly.

## WITNESS LIST

Danny Blandford, Conservation Director of Indiana B.A.S.S  
Christine Bowyer, Miami Nation of Indians of Indiana  
Matt Brooks, Executive Director, Association of Indiana Counties  
Barbara Brown, Citizen  
Brian Buchanan, Chief, Miami Nation of Indians of Indiana  
Marilyn Cage, Legislative Liaison, Bureau of Motor Vehicles  
Beth Compton, Governor's Office Executive Assistant  
John Davis, Deputy Director, Department of Natural Resources  
Lynn Dennis, Nature Conservancy  
John Dunnigan, Miami Nation of Indians of Indiana  
Bob Eddleman, Marion County Water Conservation District  
Paul Ehret, DNR Deputy Director  
Larry Fisher, Marshall County Surveyor  
Sandra Flumm, Allen County Commissioners Office  
Brandon Forester, Whitley County Engineer  
Penny Fouts, Miami Nation of Indians of Indiana  
Al Frisinger, Allen County Surveyor  
John Goss, Director, DNR  
Brenda Hartleroad, Miami Nation of Indians of Indiana  
Debra Haza, Native American Indian Voices of Indiana  
Ted Hemstra, Ft. Wayne Acres, Inc.  
Jason Hill, Regional Biologist for Ducks Unlimited  
Tom Hohman, Engineer, DNR  
Jack Hyden, Indiana Beagler's Alliance  
Erin Kremer, State Personnel Department  
Pam Kruze, Secretary, Oakwood Place Association  
Niann Lutzenheiger, Citizen  
Dan Mathis, Legislative Liaison, DNR  
Greg McCollum, Assistant Director, Division of Fish and Wildlife, DNR  
Kathy McCoy, citizen of Steuben County  
Dick Mercier, Indiana Sportsman's Roundtable  
John Molitor, Indiana Historical Society and Indiana Historic Landmarks Foundation  
Mike Nickolaus, Director of Oil and Gas Division, DNR  
Mike Neyer, Director of the DNR Division of Water  
Fritze Nodine, Oakwood Place Association  
Phil Ohmit, Hoosier Conservation Alliance  
Charlie O'Neal, Indiana Wildlife Federation  
Jay Poe, Huntington County Surveyor  
Barbara Power, Citizen  
Rex Pranger, LaGrange County Surveyor  
Sara Siders, Miami Indian  
Coleen Synder, Oakwood Place Association  
Sally Tuttle, Native American Indian Voices of Indiana  
Izzac Walton League Representative  
Dr. Robert Waltz, State Entomologist and Director of the DNR Division of Entomology and Plant Pathology  
Randy White, Manager, Pokagon State Park  
Reed Williamson, President of Historic Landmarks Association of Indiana

Paula Yeager, Executive Director, Indiana Wildlife Federation